

REMARKS

By this amendment, Applicant cancels all previously pending claims and submits new claims 102-182. The new claims include two independent claims, 102 and 141. Previously pending claims 49-62, 65, 66, 70-85, and 92-101 were rejected in the Official Action dated February 9, 2005 on various grounds which, as discussed below, do not apply to the newly-submitted claims.

Rejection under 35 U.S.C. § 102(b)

Previously pending claims 49-57, 60, 62, 65, 66, 70, 71, 75-80, 92 and 94-101 were rejected under 35 U.S.C. § 102(b) as being anticipated by Wardlaw (WO 99/02108). Newly submitted independent claims 102 and 141 are not disclosed by Wardlaw. Wardlaw does not teach, *inter alia*, a main body portion and at least one extension having an axis projecting along a respective reference plane, where the reference plane extends substantially laterally from the main body portion. Nor does Wardlaw disclose either a fixation element or a receptacle as recited, respectively, by independent claims 102 and 141. Accordingly, it is respectfully submitted that the instant claims are allowable over Wardlaw, early indication of which is requested.

Dependent claims 103-140 and 142-182 depend from independent claims 102 and 141, and are allowable for at least the same reasons as set forth above. Indication of allowability by the examiner is respectfully requested.

Rejection under 35 U.S.C. § 103(a)

Previously pending claim 58 was rejected under 35 U.S.C. § 102(b) as being unpatentable as obvious over Wardlaw in view of Ray (US 4,904,260). As set forth above, Wardlaw does not teach, *inter alia*, a body portion, an extension, nor a fixation element or a receptacle as recited, respectively, by claims 102 and 141. Ray, directed

to a prosthetic disc device, does not cure these deficiencies, as was relied upon by the examiner for teachings of various materials. Accordingly, it is respectfully submitted that the instant claims are allowable over Wardlaw in view of Ray, early indication of which is requested.

Previously pending claims 59, 61, 72-74, 81-85 and 93 were rejected under 35 U.S.C. § 103(a) as being anticipated by Wardlaw in view of Bao et al. (US 6,224,630). As set forth above, Wardlaw does not teach, *inter alia*, a body portion, an extension, nor a fixation element or a receptacle as recited, respectively, by claims 102 and 141. Bao was relied upon by the examiner for teachings of various materials, and also for teaching various means to attach an annular aperture plug. Notwithstanding the teaching of the attachment means, the Bao disclosure is concerned with securing a plug into an aperture within the annulus, whereas Wardlaw is directed toward a nuclear prosthesis. It is not clear how one having ordinary skill in the art would have been motivated to combine these teachings to arrive at the claimed invention.

Bao not only does not cure the deficiencies of Wardlaw, it does not by itself disclose or teach the invention as presently claimed. Nowhere does Bao disclose a body portion and at least one extension having an axis projecting along a respective reference plane, said reference plane extending substantially laterally from the main body portion and constructed such that said axis can flexibly deflect from its respective reference plane. Accordingly it is respectfully submitted that Bao does not in any proper way preclude the allowance of the present independent claims.

Dependent claims 103-140 and 142-182 depend from independent claims 102 and 141, and are allowable for at least the same reasons as set forth above. Indication of allowability by the examiner is respectfully requested.

Accordingly, it is respectfully submitted that the instant claims are allowable over Wardlaw in view of Bao, early indication of which is requested.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 31, 2005

By: _____

A handwritten signature in black ink, appearing to read 'Eric P. Raciti', is written over a horizontal line.

Eric P. Raciti
Reg. No. 41,475